the right arose.[2] When suit is allowed upon a foreign right, although the foreign statute of limitations has run against it, on the ground that the statute affects the remedy only, one feels that justice has been sacrificed to a theory. Enactments have therefore been passed in most states refusing a remedy in their courts in such a case. The objection to a suit of that kind is especially forcible when the right arises solely under a statute of the foreign jurisdiction. In that case, the courts, without the aid of legislation, have generally made a distinction. If the statute giving the right contains a proviso that action on the right must be brought within a given time, it cannot be brought after that time in any jurisdiction.[3] This provision of limitation is regarded as a condition or qualification of the right, determining its nature and extent, and affecting the right into whatever court it is taken. Such a provision of limitation need not be contained in the same section of the special statute,[4] but it must be a special limitation upon the action or class of actions contained in that statute, and not merely a limitation applying to the whole body of actions generally.[5] Where, however, a statute gives a right under certain circumstances, which circumstances have occurred, and thereafter a retroactive statute is passed limiting the time within which any suit may be brought, it can hardly be said that this limitation, though made applicable to the right in question, is a qualification of that right at the time it came into existence. However, it has been recently decided that in this case, also, the *lex loci* will govern. *Davis* v. *Mills*, 194 U. S. 451. The court reached its decision by holding that the limitation was of the kind which destroyed the right. Had the right in question been a common law right, and the statute of limitations a general one, the court would undoubtedly have held that the limitation affected not the right but only the remedy. Since it could not be regarded, however, as a qualification of the right when created, there seems no logical reason for holding the reverse of this merely because the right arose under statute, and the limitation was made particularly applicable to it. Though the result is illogical, it nevertheless strikes one as desirable that recovery should be forbidden on a statutory right which is expressly barred by statute in the state which gave it. Having in mind the distinction already made in regard to statutes containing a proviso of limitation, the court may have felt that the present further step presented no very serious difficulty. The result of the authorities, therefore, would seem to be that in all cases where a statute gives a right unknown to the common law, and either in this statute or elsewhere a special period of limitation is placed for that right or class of rights, that limitation will be enforced wherever suit is brought.

RIGHT OF THE DEVISEE OF A MORTGAGED ESTATE TO CLAIM EXONERATION OUT OF PECUNIARY LEGACIES. — In marshalling the assets of a decedent for the payment of debts and legacies the rule that the personal estate is the natural primary fund for the payment of debts contracted by the deceased is universally recognized.[1] Some limitations to this rule have

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[2] Perkins *v.* Guy, 55 Miss. 153.
[3] Pittsburg, etc., Railroad Co. *v.* Hine, 25 Oh. St. 629.
[4] Boyd *v.* Clark, 8 Fed. Rep. 849.
[5] O'Shields *v.* Georgia Pacific Railway Co., 83 Ga. 621

[1] 2 Woerner, Am. Law of Administration 1093.

grown up however. One of these, the holding of mortgaged land which has come to a devisee primarily liable for the mortgage debt, is discussed in a recent article in the Virginia Law Register. *The Equitable Doctrine of Marshalling the Assets of a Decedent's Estate for the Payment of Debts*, by C. B. Garnett, 11 Va. L. Reg. 175. That the mortgagee in such cases may, in the absence of statutes, resort to the personalty for the payment of the debt is not questioned.[2] When he does this, however, to the detriment of pecuniary legatees, equity gives those legatees a claim on the estate to the extent to which funds, otherwise theirs, have been applied in discharging the debt. This has long been settled in England.[3] At present, in that country, the matter is to a large extent covered by statutes.[4] The English doctrine is generally followed in the United States,[5] though not universally.

It would seem that the prevailing view is not wholly unassailable. It is not altogether easy to see the grounds on which the courts have taken the mortgage debt out of the class of other debts. In the case of a vendor's lien on land devised it has been held that pecuniary legacies may be encroached upon for the exoneration of the land and that the legatees do not thereby gain the right to be repaid out of the land.[6] For the purpose of deciding which of two objects of a testator's bounty is to be preferred to the other, the distinction between the devisee of land for which the testator has not paid and the devisee of land on the security of which he has obtained a loan seems somewhat fine. Moreover, the early decisions apparently proceeded upon the assumption that as against the pecuniary legatee the devisee of a mortgaged estate had the equity of redemption only.[7] It would seem to follow that he should have no more as against the residuary legatee. Yet the courts hold that as against the residuary legatee the devisee is to be preferred.[8] The doctrine under discussion, although followed, has been frequently criticised by English courts. In a comparatively recent case, while the court regarded the rule as too well settled by authority to be changed, it was pointed out that there seems to be no real reason for holding that the devisee of mortgaged land is less entitled to preference than the pecuniary legatee, both being at least equally objects of the testator's intended bounty.[9] In the United States there are a few decisions holding that unless the testator has expressed a contrary intention a devisee of mortgaged real estate is entitled to have the mortgage discharged out of the personal estate even though the latter is insufficient to pay general pecuniary legacies.[10] It would seem as a matter of logic that this view is to be preferred to that of Mr. Garnett, who supports the doctrine followed by the weight of authority.

MODERN VIEWS OF CHAMPERTY AND MAINTENANCE. — The first definite recognition of champerty and maintenance in English law is found in a series of statutes of Edward I., making them criminal offenses.[1] The object

2 Hewes *v.* Dehon, 3 Gray (Mass.) 205.
3 Lutkins *v.* Leigh, Cas. t. Talb. 53.
4 17 & 18 Vict. c. 113.
5 Gould *v.* Winthrop, 5 R. I. 319.
6 Todd *v.* McFall, 96 Va. 754.
7 Wythe *v.* Henniker, 2 Myl. & K. 635, 644.
8 Thomas *v.* Thomas, 17 N. J. Eq. 359.
9 *In re* Smith, [1899] 1 Ch. D. 365.
10 Brown *v.* Baron, 162 Mass. 56.

1 See Schomp *v.* Schenck, 40 N. J. Law 195, 205.